BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF FEDERAL-	§	
STATE JOINT BOARD ON	§	**CC DOCKET NO. 96-45, ET AL.**
UNIVERSAL SERVICE, ET AL.	§	

COMMENTS OF THE STATE OF TEXAS

NOW COMES THE STATE OF TEXAS (State), by and through the Office of The Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section, and files these its comments on the *Second Further Notice of Proposed Rulemaking* released December 13th, 2002 in FCC Order No. 02-329. These comments are timely filed pursuant to the Commission's subsequent order extending the deadlines in DA-03-203.

The Public Agency Representation Section of the Office of the Attorney General submits these comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas.

Governmental Entity Exemption

As we stated in our previous comments on the *Further Notice of Proposed Rulemaking* released February 26th, 2002 in FCC Order No. 02-43, the State appreciates the Commission's reiteration of the principle that the federal universal service fund fee is imposed on carriers, who are not required to pass this fee through to end users as stated in ¶s 10 and 42 of the *Second Further Notice.* The passing through of taxes, fees and regulatory assessments to governmental entities continues to be an issue that is of particular concern to this office. In many instances, governmental entities are specifically exempted from such pass throughs. See 26 U.S.C. §4253 (i) &(j). Numerous state law examples of such exemptions also exist. Texas Health and Safety Code

§771.074, for example, provides an exemption to the state from the assessment of 911 and poison control surcharges. Carriers can also be precluded from passing the costs of their taxes along to their customers due to their negotiated contractual arrangements, in instances in which the opportunity for negotiating such terms exists.

We do not believe that "taxing" governmental units with fees such as the FUSF contribution fee is ever appropriate and while we understand the constraints imposed on the Commission by the prohibition against discrimination, we do not believe that unreasonable discrimination occurs when governmental entities, which are, after all, tax supported, are exempted from paying the taxes of commercial entities. The FUSF charge has many characteristics of a tax, in that it is imposed on all providers of interstate telecommunications services and is used for the purely governmental purpose of providing universal telecommunications service in all parts of the country.

An inherent unfairness exists in requiring tax-supported entities to pay a universal service fee, which must then be collected from taxpayers who are already required to pay this fee when they purchase their own telecommunications services. Likewise, any governmental entity which is tax-supported must raise additional revenue from taxpayers to pay the taxes and fees of these interstate telecommunications providers if they are permitted to be passed through. Unlike a business, governments cannot simply raise the prices of our goods or services to cover these additional costs.

While we appreciate and applaud the Commission's decision to prohibit any mark-up of the fee recovered from customers above the mandated contribution factor, this decision simply does not go far enough to meet the realities of the current and foreseeable economic environment in which state governments now operate. Because the Commission, in ¶s 45, 49, and 62, has continued and expanded the exemption of lifeline customers from any universal service contribution, on the premise that the number of connections they are responsible for is de minimis, we deem it all the more appropriate to exempt governmental entities for the same reasons. The budgetary concerns of this state, as well as others, have only become more severe since the time of our comments to the *Further Notice*. In a time of severe budgetary restrictions and revenue shortages, an obligation levied on the states to pay for the regulatory expenses of telecommunications providers is difficult to justify in any fashion. It is readily apparent that state government lines, which are ultimately paid for by taxpayers who are already contributing to universal service through their own phone bills, should be exempted from contribution under the same analysis used to exempt lifeline customers. Our estimate of the number of connections for the State of Texas' governmental institutions remains approximately 50,000, far less than the "de minimis" 5.9 million, plus the newly included CMRS and CLEC lines, exempted by the Commission as lifeline connections. Exempting state governments from the FUSF passthrough is both logical and equitable and we urge the Commission to do so.

<u>Connection-based Assessment</u>

Barring the complete exemption which we clearly favor, the State tentatively concludes that the capacity-based connection assessment is the most equitable alternative collection methodology presented, as it appears to include all classes of carriers, both switched access and transport bear a burden, and the burden is based upon the capacity of the service purchased, which is the quality of a "connection" most clearly associated with the value of the service. If an equitable assessment is the goal, this appears to be the preferable route.

The proposed methodology outlined, but not in great detail, in ¶s 86-95 of the *Second Further Notice* appears to be sound, and we await the initial round of comments, in which telecommunications carriers with expertise on the effects of the proposals will hopefully provide some illumination as to their specific benefits and drawbacks, before reaching our final conclusion.

As an initial point, we do support the proposed treatment of centrex lines as calculated at one-ninth the rate of a PBX line, as expressed in ¶ 87. We also find that the predictability of this methodology is helpful, and avoids the problems created by assigning the residual amount to be collected to multi-line business customers, as the first connection-based alternative provides.

An additional concern we have with a capacity-based methodology is that the capacity of the service purchased, and not the physical capacity of the facilities used to provide the service, should be the determining factor in deciding what the actual capacity of the service is. This relieves the customer from any potential obligation to be paying for capacity which is not actually received or used. We also support the exemption of intra-state and international-only connections from the contribution base.

The State of Texas appreciates this opportunity to provide comment on this *Second Further Notice of Proposed Rulemaking* and looks forward to responding to the comments of the proponents of the proposals.

Respectfully submitted,

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